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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDIAN HARBOR INSURANCE COMPANY,

Plaintiff,

v.

2420 PROSPECT AVENUE CORP. and LISA SOSA,

Defendants.

Index No. 08-cv-2004 NRB

Declaration of Sarah Anne Kutner

SARAH ANNE KUTNER, an attorney duly admitted to practice before this Court and the Courts of the State of New York, declares the following under penalty of perjury:

1. I am duly admitted to practice law before the United States District Court for the Southern District of New York. I am an associate with the law firm of Nixon Peabody LLP, counsel for plaintiff Indian Harbor Insurance Company ("Indian Harbor") in this action. As such, I am fully familiar with the facts of this matter set forth herein based on my review of the file and handing of this case.

2. I submit this Declaration in support of Indian Harbor's order to show cause and proposed Order declaring that there is no coverage for defendants 2420 Prospect Ave. Corp. ("2420 Prospect") and Lisa Sosa under Indian Harbor insurance contract number WFI3001265 (the "Indian Harbor insurance contract") for the underlying action entitled *Lisa Sosa v. 2420 Prospect Avenue, Corp.*, Index No. 7319/07, Supreme Court of the State of New York, Bronx County (the "*Sosa* Action").

3. Indian Harbor commenced this action on February 28, 2008, seeking, among other things, a declaration that there is no coverage for the defendants under the Indian Harbor insurance contract for the *Sosa* Action. *See* docket entry #1.

4. Both Lisa Sosa and 2420 Prospect were served with the pleadings in this action in accordance with the Federal Rules of Civil Procedure and the New York Civil Practice Law and Rules Section 308. *See* docket entry nos. 3, 4 and 5.

5. Lisa Sosa has failed to respond in any way to the complaint or appear in this action to date, and is thus in default.

6. 2420 Prospect and Indian Harbor have agreed that there is no coverage under the Indian Harbor Insurance Contract for the *Sosa* Action.

7. 2420 Prospect and Indian Harbor have further agreed that Indian Harbor will withdraw the defense counsel that has been provided to 2420 Prospect in the *Sosa* Action to date, and that no costs will be sought by either party with respect to this action or the *Sosa* Action.

8. Indian Harbor now brings this Order to Show Cause so that defendant Lisa Sosa, who has defaulted in this action, will have an opportunity to show good cause why the accompanying Proposed Order should not be entered as binding on the parties to this action.

9. If good cause is not shown, Indian Harbor respectfully requests that the Proposed Order be entered and this action be dismissed.

Dated: Jericho, New York
July 23, 2008

Sarah Anne Kutner (SAK6516)

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